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December 2, 2011

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BY E-File

Cynthia Brown
 Chief, Section of Administration
 Surface Transportation Board
 Office of Proceedings
 395 E Street, SW
 Washington, DC 20423

STB
 Office of Proceedings
 Dec 2 2011
 Fed. of
 Public Record

Re: STB Finance Docket No. 35412, Middletown & New Jersey
 Railroad, LLC -- Lease and Operation Exemption -- Norfolk
 Southern Railway Company

Dear Ms. Brown:

Attached for e-filing is the Reply of Middletown & New Jersey
 Railroad, LLC to the Motion To Strike filed by United Transportation
 Union-New York State.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell
 Of Counsel

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35412

MIDDLETOWN & NEW JERSEY RAILROAD, LLC
--LEASE AND OPERATION EXEMPTION--
NORFOLK SOUTHERN RAILWAY COMPANY

REPLY TO UNITED TRANSPORTATION UNION-NEW YORK STATE'S
MOTION TO STRIKE

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Attorney for:
MIDDLETOWN & NEW JERSEY
RAILROAD, LLC.

Dated: December 2, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35412

MIDDLETOWN & NEW JERSEY RAILROAD, LLC
--LEASE AND OPERATION EXEMPTION--
NORFOLK SOUTHERN RAILWAY COMPANY

REPLY TO UNITED TRANSPORTATION UNION-NEW YORK STATE'S
MOTION TO STRIKE

Middletown & New Jersey Railroad, LLC ("M&NJ"), hereby replies in opposition to the Motion To Strike filed with the Surface Transportation Board ("Board") by Samuel J. Nasca, for and on behalf of United Transportation Union-New York State ("UTU") on November 15, 2011 ("Motion").

BACKGROUND

By decision served September 23, 2011, in this proceeding, the Board denied UTU's request to have M&NJ's notice of exemption rejected or to have the exemption revoked. On October 13, 2011, UTU filed a Petition For Reconsideration ("Petition") to which M&NJ replied on October 26, 2011 ("Reply"). UTU now seeks to strike M&NJ's Reply

REPLY TO MOTION

UTU seeks to strike all or portions of the Reply on grounds that the Reply introduces new evidence. The evidence and argument submitted in the Reply were in direct response to the allegations made in the Petition and not as supplemental evidence and argument in support of its

Notice of Exemption. Throughout this proceeding, UTU has not introduced a shred of credible evidence in support of its contention that M&NJ was not a common carrier in August 2010. Instead, UTU relies solely on unsubstantiated and patently false allegations. To refute these allegations, M&NJ has submitted overwhelming evidence of the extensive operations performed by M&NJ prior to the filing of its Notice of Exemption in this proceeding. For example, in its February 22, 2011, reply, M&NJ submitted industry standard interchange reports demonstrating numerous interchanges of loaded cars between M&NJ and Norfolk Southern Railway Company (“NS”) for the 17 month period after March, 2009. In the Petition, UTU attempted to belittle these reports alleging that they only reflect empty cars coming to M&NJ tracks for storage. In light of this baseless allegation, M&NJ submitted additional evidence demonstrating that M&NJ was a fully operational railroad prior to the filing of its Notice of Exemption.

UTU also seeks to have the Verified Statement of Mr. Alfred Sauer stricken on grounds that Mr. Sauer does not have personal knowledge of the alleged facts. Mr. Sauer is the Vice President of M&NJ and, as an officer of M&NJ, has full knowledge of its day to day operations. The records attached to his verified statement are kept in the ordinary course of business.¹ Moreover, the Railroad Injury reports were made under penalty of perjury and filed with the Federal Railroad Administration.

Finally, UTU makes the preposterous argument that the interchange information may not indicate any active train movements by M&NJ but simply NS movement of cars on and off the M&NJ tracks. An interchange report is developed by Railinc only where an actual, physical interchange takes place between two common carriers by railroad and not where one railroad traverses the tracks of another railroad.

¹ UTU erroneously claims that there is no indication of when the “Time Reports” were prepared. Each weekly Report is dated.

CONCLUSION

M&NJ respectfully urges the Board to deny the Motion. The evidence introduced in M&NJ's reply was in direct response to the totally unsubstantiated and false allegations contained in the Petition.

Respectfully submitted,

A handwritten signature in black ink, reading "Karl Morelli". The signature is fluid and cursive, with the first name "Karl" and last name "Morelli" clearly distinguishable.

KARL MORELLI
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Attorney for:
MIDDLETOWN & NEW JERSEY RAILROAD,
LLC

Dated: December 2, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2011, I have caused a copy of the foregoing Reply to be served on all parties of record.

A handwritten signature in cursive script, reading "Karl Morell", is written over a horizontal line.

Karl Morell